



Economic Impact Analysis Virginia Department of Planning and Budget

9 VAC 20-160 – Voluntary Remediation Regulations Virginia Waste Management Board July 2, 2001

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The Waste Management Board proposes (i) to allow additional test methods to evaluate contamination, (ii) to set time frames in the regulations in terms of calendar days instead of working days, (iii) to require program participants to acknowledge any comments received during the public comment period and provide the Department of Environmental Quality (the agency) copies of any responses made to comments, (iv) to update documents incorporated by reference, and (v) to improve the readability of the regulation.

Estimated Economic Impact

The Voluntary Remediation Program encourages hazardous substance cleanups that might not otherwise take place. The program establishes procedures for voluntary owners or operators to remedy contamination at their sites. When the cleanup is satisfactorily completed, the agency issues a "certification of satisfactory completion of remediation." This certification provides an exemption from further enforcement unless new issues are discovered.

The proposed regulations expand the evaluation test methods to include “other methodologies approved by the department.” This is in addition to the methods specified in the referenced documents in the regulations. The agency indicates that alternate methods that have not been incorporated by reference will not be required unless the program participant makes a request. This change is expected to increase the participant’s choices in evaluating sites. According to the agency, sometimes the program participant may wish to use other methods because methods prescribed in the referenced material may not be appropriate for a specific site. In addition, analytic equipment, techniques, and methods for testing the efficacy of remediation efforts are constantly being developed. The regulatory process may not always keep up with technical advances.

In practice, the agency has been using the most recent methods. In those cases, where the referenced methods are not appropriate for a specific site, the participant will have the option to seek approval from the agency to use an alternate test method. The agency will then review the alternate test method and determine if it will be allowed. For example, the Environmental Protection Agency (EPA) may have updated test methods for evaluating solid waste and added a new test method. The participant may wish to use the new approved test method at their site and may request the director to approve the new test method. This proposed change allows the program participant to use more appropriate methods. The agency expects requests for about two cases per year to employ alternate methods instead of standard methods included in the documents incorporated by reference. The use of more appropriate test methods is expected to give more accurate results. The agency does not believe there is any increase in health risks by deviating from the test methods in referenced documents. Thus, the proposed change is expected to be beneficial for the program participants and may result in cleaner sites if more appropriate methods are employed.

The time frames in the regulation are proposed to be set in terms of calendar days instead of working days. The term, “working days,” created confusion for the regulated community. The agency has received complaints concerning the ambiguity of the term “working days.” The proposed changes are likely to prevent such confusions. The proposed use of calendar days instead of working days will reduce the time frame given to an applicant to contest the director’s decision to deny an application to participate in the program from 30 working days to 30 calendar days. According to the agency, the new time frame is consistent with the

Administrative Process Act. Nonetheless, the program participants will have less time to contest the decision on the application. Second, the proposed change will reduce time given to the program participants to request a reimbursement of their registration fee balance from 60 working days to 60 calendar days.¹ Third, the time frame for the director to expedite issuance of a permit after receiving a submittal of demonstration of completion will be reduced from 120 working days to 120 calendar days. As opposed to other two changes, this change reduces the time given to the agency instead of the participant. The director will have to take action on the complete permit application sooner. The participant may realize some timesavings. The agency indicates that the proposed time changes have the potential to expedite the overall process by reducing time frames for the participant and the agency. However, available information is not sufficient to determine if these changes will produce net economic benefits for the Commonwealth.

Program participants will be required to acknowledge any comments received during the public comment period and provide the agency copies of any responses made to comments. A letter will be sent to the commenter acknowledging the comment, and a copy of that acknowledgement will be forwarded to the agency. This proposed change will make sure that the commenters are being acknowledged, and the agency is aware of the correspondence between the participant and the commenter, if any takes place. The agency indicated that the number of comments received is not many. Commenters are likely to benefit from knowing that their concerns reached the participant. The agency is also likely to benefit from being notified what the concerns are. The program participant, however, is likely to incur small costs to respond to both the commenter and the agency. However small the costs may be, it is unclear what the net economic impact would be.

The proposed amendments update documents incorporated by reference. Certain scientific documents are incorporated by reference to address acceptable remediation methods. These EPA documents are needed to administer the program. They provide the necessary technical information. For example, the Test Methods for Evaluating Solid Waste is used as a guidance for analytical and sampling methods, the Soil Screening Guidance is used as a tool to

¹ Participants are not required to provide a cost estimate to determine registration fee at the time of application if they pay the statutory maximum. They may request outstanding balance after the actual costs incurred and the exact fee is calculated.

standardize and accelerate evaluation and cleanup of contaminated soils, the Risk Assessment Guidance for Superfund outlines the process in risk assessment, and the Risk Based Concentration Table provides assistance in evaluating risks to human health. The proposed changes refer to the most recent version of these documents. The agency is not aware of any significant differences in referenced materials regarding the test methods. And, the agency has been using the most recent versions in practice. Thus, no significant economic impact is expected.

The other changes include changes in definitions, reorganization of the regulation, and clarifications to make it more understandable. Some participants were having problems interpreting and following the requirements prescribed because of the language in the regulations. The problems were not significant, but since the agency was amending the regulations, a decision was made to clarify and reorganize the regulations to improve readability. As a result of these changes, the proposed amendment will more clearly delineate the expectations of the department.

Businesses and Entities Affected

According to DEQ, 130 sites have entered the program in the last five years. Based on that information, the agency expects about 24 sites to enter the voluntary remediation program annually. Thus, the proposed changes will affect about 24 voluntary property owners per year whose sites are expected to enter the program.

Localities Particularly Affected

The proposed amendments apply throughout the Commonwealth.

Projected Impact on Employment

No significant effect on employment is expected.

Effects on the Use and Value of Private Property

Since the proposed changes allow alternate methods for the site cleanups upon request from the program participant, it is likely that the preferred method will provide benefits to the property owner. In some cases, the owner's request may be based on the desire to achieve a cleaner site with more appropriate methods in the hopes of increasing the value of the

contaminated property. The value of such property may increase if a higher level of remediation is achieved.